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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,381	04/27/2001	D. Scott Jorgenson	10005476-1	1553

22879 7590 10/13/2009

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
2446	

NOTIFICATION DATE	DELIVERY MODE
10/13/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/844,381	JORGENSON, D. SCOTT	
	Examiner	Art Unit	
	BENJAMIN R. BRUCKART	2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23,27,28 and 30-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23, 27-28, 30-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 April 2001* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Status of Claims:

Claims 1-23, 27-28, 30-32 are pending in this Office Action.

Claims 24-26, 29 remain cancelled.

Response to Arguments

In view of the appeal brief filed on 8/08/07, PROSECUTION IS HEREBY REOPENED. See rationale and rejections set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Jeffrey Pwu/

Supervisory Patent Examiner, Art Unit 2446.

Applicant's invention as claimed:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 12, 22, and 28 are rejected on the ground of nonstatutory double patenting over claims 1-12 of U. S. Patent No. 6,813,635 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the '635 case claims read on the steps of receiving and extracting (claim 1 of '635-determining and extracting foundations for the redirecting the request), retrieving if a pre-requisite has not been set (taught by the flag limitations in claim 1, 2 of '635), forming and transmitting are shown by redirecting with the proper address and naming of claims 1, 3,4 of '635).

Claims 1, 12, 22, and 28 are rejected on the ground of nonstatutory double patenting over claims 1-12 of U. S. Patent No. 7,203,764 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The '764 case recites steps of receiving and extracting and determining (similar to the receiving and evaluating steps of the instant case), retrieving from when a pre-requisite is not met, such as the flag limitations of the '764 case, forming and transmitting the response to the Web client is taught by the steps of redirecting and sending in claims 1, 3, 5 of '764.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22-23, 27-28, 31-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 22-23, 27 recite a web server with a first, second, third and fourth mechanism involved in the body of the claim. Those mechanisms are interpreted as components of software via the specification (publication page 64) and detailed claim 23. Therefore the claim is rejected as software per se. Similarly, claims 28, 31-32 are rejected as software per se for the reasons given above. The language of these steps states the mechanisms are "configured to" perform the steps of the invention, thus by not positively executing or performing the steps of the invention, the claims are claiming entities that could but aren't executing the invention, just as software remains configured to perform steps when executed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-23, 27-28, 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No 6,006,269 by Phaal.

Regarding claim 1, a method implemented at a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Phaal: col. 2, lines 31-45), the method comprising:

receiving and evaluating a current HTTP request from a Web client to determine whether a previously unsatisfied prerequisite has been satisfied (Phaal: col. 2, lines 46-53);

retrieving from a stored location information related to re-requesting a target HTTP request previously interrupted by the prerequisite (Phaal: col. 2, lines 53-64), if the receiving and evaluating step determines that a previously unsatisfied prerequisite has been satisfied (Phaal: col. 2, lines 51-65);

forming an HTTP response, which response includes contents for re-requesting from the Web client the target HTTP request (Phaal: col. 2, lines 65- col. 3, line 15); and

transmitting the response to the Web client that transmitted the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15).

Regarding claim 2, the method according to claim 1, wherein the prerequisite is an authentication prerequisite (Phaal: col. 8, lines 2-5).

Regarding claim 3, the method according to claim 1, wherein the prerequisite is an entitlement prerequisite (Phaal: col. 4, lines 46-57).

Regarding claim 4, the method according to claim 1, wherein the prerequisite is a workflow prerequisite (Phaal: col. 4, lines 46-57; col. 5, lines 58-63).

Regarding claim 5, the method according to claim 1, wherein the information retrieved from the stored location, includes the original target URL, queries, and form arguments (Phaal: col. 5, lines 58-3).

Regarding claim 6, the method according to claim 1, wherein the information retrieved from the stored location, includes sufficient additional state information (Phaal: col. 5, lines 58-65), so that re-request contents within the HTTP response are adequate for the Web client to repeat the target HTTP request as originally transmitted (Phaal: col. 6, lines 25-49).

Regarding claim 7, the method according to claim 1, wherein the information retrieved from the stored location, includes the type of prerequisite previously unsatisfied for the target HTTP request (Phaal: col. 6, lines 16-25).

Regarding claim 8, the method according to claim 1, wherein the stored location uses client-side session state (Phaal: col. 6, lines 50-65).

Regarding claim 9, the method according to claim 1, wherein the stored location uses server-side session state (Phaal: col. 6, lines 1-12).

Regarding claim 10, the method according to claim 1, wherein the HTTP response formed includes content to cause the Web client to automatically re-request the target HTTP request (Phaal: col. 6, lines 50-65; col. 7, lines 12-30).

Regarding claim 11, the method according to claim 1, wherein the HTTP response formed includes content to inform and allow the user of the Web client to optionally re-request the target HTTP request (Phaal: col. 7, lines 12-30).

Regarding claim 13, the method according to claim 7, wherein the prerequisite is an authentication prerequisite (Phaal: col. 8, lines 2-5).

Regarding claim 14, the method according to claim 7, wherein the prerequisite is an entitlement prerequisite (Phaal: col. 4, lines 46-57).

Regarding claim 15, the method according to claim 7, wherein the prerequisite is a workflow prerequisite (Phaal: col. 4, lines 46-57; col. 5, lines 58-63).

Regarding claim 12, a method implemented at a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Phaal: col. 2, fines 31-45), the method comprising:

receiving and evaluating a current HTTP request from a Web client to determine whether an unsatisfied prerequisite exists (Phaal: col. 2, lines 46-53);

saving to a stored location information related to re-requesting the current HTTP request (Phaal: col. 2, lines 51-65), if the receiving and evaluating step determines that an unsatisfied prerequisite exists (Phaal: col. 2, lines 65- col. 3, line 15; col. 6, lines 29-49);

forming an HTTP response, which response omits desired contents from a location specified by the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15); and

transmitting the response to the Web client that transmitted the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15).

Regarding claim 16, the method according to claim 12, wherein the information saved to the stored location includes the current URL, queries, and form arguments (Phaal: col. 5, lines 58-col. 6, line 3).

Regarding claim 17, the method according to claim 12, wherein the information saved to the stored location includes sufficient additional state information (Phaal: col. 5, lines 58-65), so that an HTTP response may later be generated containing contents adequate for the Web client to re-request the current HTTP request as originally transmitted (Phaal: col. 6, lines 25-49).

Regarding claim 18, the method according to claim 12, wherein the information saved to the stored location further includes the type of prerequisite that is unsatisfied (Phaal: col. 6, lines 16-25).

Regarding claim 19, the method according to claim 12, wherein the stored location uses client-side session state (Phaal: col. 6, lines 50-65).

Regarding claim 20, the method according to claim 12, wherein the stored location uses server-side session state (Phaal: col. 6, lines 1-12).

Regarding claim 21, the method according to claim 12, wherein the HTTP response formed includes content to inform and allow the user of the Web client to optionally initiate activity to satisfy the unsatisfied prerequisite (Phaal: col. 7, fines 12-32).

Regarding claim 30, the method according to claim 12, wherein the HTTP response formed includes content to automatically initiate activity to satisfy the unsatisfied prerequisite (Phaal: col. 7, lines 12-32).

Regarding claim 22, a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Phaal: col. 2, lines 31-45), the Web server comprising:

a first mechanism configured to evaluate a current HTTP request from a Web client to determine whether a previously unsatisfied prerequisite has been satisfied (Phaal: col. 2, lines 46-53);

a second mechanism configured to retrieve from a stored location information related to re-requesting a target HTTP request previously interrupted by the prerequisite (Phaal: col. 2, lines 53-64), in response to the first mechanism determining that a previously unsatisfied prerequisite has been satisfied (Phaal: col. 2, lines 51-65);

a third mechanism configured to form an HTTP response, which response includes contents for re-requesting from the Web client the target HTTP request (Phaal: col. 2, lines 65- col. 3, line 15); and

a fourth mechanism configured to transmit the response to the Web client that transmitted the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15).

Regarding claim 23, the Web server according to claim 22, wherein each of the first, second, third, and fourth mechanisms are implemented in sottware (Phaal: col. 7, lines 60- col. 8, line 10; col. 4, lines 38-42).

Regarding claim 27, the Web server according to claim 22, wherein the Web server collectively comprises multiple computers that collaborate (Phaal: Fig. 1; col. 5, lines 6-23).

Regarding claim 28, a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Phaal: col. 2, lines 31-45), the Web server comprising:

a first mechanism configured to evaluate a current HTTP request from a Web client to determine whether an unsatisfied prerequisite exists (Phaal: col. 2, lines 46-53);

a second mechanism configured to save to a stored location information related to re-requesting the current HTTP request (Phaal: col. 2, lines 53-64), in response to the first mechanism determining that an unsatisfied prerequisite exists (Phaal: col. 2, lines 51-65);

a third mechanism configured to form an HTTP response, which response omits desired contents from a location specified by the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15); and

a fourth mechanism configured to transmit the response to the Web client that transmitted the current HTTP request (Phaal: col. 2, lines 65- col. 3, line 15).

Regarding claim 31, the Web server according to claim 28, wherein each of the first, second, third and fourth mechanisms are implemented in software (Phaal: col. 7, lines 60- col. 8, line 10; col. 4, lines 38-42).

Regarding claim 32, the Web server according to claim 28, wherein the Web server collectively comprises multiple computers that collaborate (Phaal: Fig. 1, col. 5, lines 6-23).

Claims 1, 12, 22, and 28 are rejected under 102(b) as anticipated by U.S. Patent Publication No. 2002/0069366 by Schoettger.

Regarding claims 1, 12, 22 and 28, a method implemented at a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Schoettger: page 1, para 9), the method comprising:

receiving and evaluating a current HTTP request from a Web client to determine whether a previously unsatisfied prerequisite has been satisfied (Schoettger: page 1, para 9; is the user authenticated?);

retrieving from a stored location information related to re-requesting a target HTTP request previously interrupted by the prerequisite (Schoettger: page 1, para 9-10; destination address and verifying level of access), if the receiving and evaluating step determines that a previously unsatisfied prerequisite has been satisfied (Schoettger: page 1, para 9-10);

forming an HTTP response, which response includes contents for re-requesting from the Web client the target HTTP request (Schoettger: page 2, para 11); and

transmitting the response to the Web client that transmitted the current HTTP request (Schoettger: page 2, para 11-12).

Claims 1, 12, 22, and 28 are rejected under 102(e) as anticipated by U.S. Patent Publication No. 2002/0112083 by Joshi et al.

Regarding claims 1, 12, 22 and 28, a method implemented at a Web server for controlling the resumption of access to a World Wide Web page to be supplied by the Web server and requiring at least one prerequisite (Joshi: page 21, para 241), the method comprising:

receiving and evaluating a current HTTP request from a Web client to determine whether a previously unsatisfied prerequisite has been satisfied (Joshi: page 21, para 241-244);

retrieving from a stored location information related to re-requesting a target HTTP request previously interrupted by the prerequisite (Joshi: page 21, para 239-246; on the data structure), if the receiving and evaluating step determines that a previously unsatisfied prerequisite has been satisfied (Joshi: page 21, para 242, 243);

forming an HTTP response, which response includes contents for re-requesting from the Web client the target HTTP request (Joshi: page 21, para 241-244); and

transmitting the response to the Web client that transmitted the current HTTP request (Joshi: page 21, para 241-244; shows pass with content or fail results).

REMARKS

Applicant has presented an appeal brief arguing the current 102(b) rejection. As three years have elapsed in this case, the interpretation of claims has changed necessitating new rejections better showing a strong lack of novel features and lack of patent eligible subject

matter. Applicant is advised that the claims are still appealable because they remain twice rejection.

The Applicant Argues:

The Phaal reference does not teach the claimed limitations.

In response, the examiner respectfully submits:

The Phaal reference does teach the claimed limitations. With regards to claim 1;

"receiving and evaluating a current HTTP request from a Web client to determine whether a previously unsatisfied prerequisite has been satisfied" is cited in col. 2, lines 46-53 of Phaal. Phaal shows a client sends a request from a client to a host. The HTTP request is to create a session and it is received and evaluated by the host to determine if the session is to be established or deferred. "If the threshold has been reached or surpassed," the message is deferred. Applicant's argument that the processing threshold cannot be interpreted as the prerequisite is without merit. The threshold of free resources is interpreted as the prerequisite. Applicant's broad language defining the prerequisite can be interpreted many ways in the claims and in response to applicant's argument that the references fail to show certain features of applicant's invention,

It is noted that the features upon which applicant relies (i.e., authentication/ entitlement/ workflow) are not recited in claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further the claim limitations are broad and unlimited.

The unsatisfied request can be interpreted as the request itself for the data from the server, that is not yet satisfied because of load conditions, thus requiring a later appointment/reservation. The request could be interpreted as the secondary request from the client, at the appointed time. This request then necessitates the following steps to be performed, to allow the servicing to the client.

The step of "retrieving from a stored location information related to re-requesting a target HTTP request previously interrupted by the prerequisite, if the receiving and evaluating step

determines that a previously unsatisfied prerequisite has been satisfied" is taught by Phaal in col. 2, lines 51-65. The stored location related to the re-request is interpreted as the cookie/key stored on the client's computer (col. 6, lines 50-65) or the stored reserved slot times for a particular client (Fig. 6B).

The loose and undefined relationship as only "related to" allows such interpretations to be proper. The prerequisite is host's processing threshold or free resources. The receiving and evaluation step has been satisfied when the resources are free or the appointment time related to the resource usage is met. Applicant does not specify how the stored location information is related only that information is retrieved when a prerequisite is finally met.

The forming and transmitting steps are shown by Phaal in col. 2, lines 65- col. 3, line 15. Phaal shows here an HTTP response to the request from the client, which holds contents that are the cookie and key information that will enable the client access to the host for retry. The claim says forming a response that includes contents for re-requesting transmission from the client. Not that the request response is from the client.

With regards to claim 12, the limitations are taught by Phaal as explained above. Claim 12, does teach saving to a location instead of retrieving. That step is also taught by Phaal where a cookie/key information is saved (emphasis added) to a client and where a time slot is reserved saving that period of processing the request for the deferred client. The information is related to re-requesting the current HTTP request because it contains cookie/identification/key information prioritizing the client to access the host at the indicated time. Claims 22 and 28 are rejected along similar lines.

The examiner requests applicant include further detailing limitations from the specification in the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R. Bruckart whose telephone number is (571) 272-3982. The examiner can normally be reached on 9:00-5:30PM. If attempts to reach the examiner

by telephone are unsuccessful, the examiner's supervisor, Jeff Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin R Bruckart
Examiner
Art Unit 2446

/Benjamin R Bruckart/
Primary Examiner, Art Unit 2446